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that the decision was directly against law, drew up a statement of the case, which convinced the court that they ought to proceed without a jury.

“Accordingly, on Tuesday the nineteenth of June, 1769, the trial commenced in Boston, before the following commissioners : — Sir Francis Bernard, governor of Massachusetts ; John Wentworth, governor of New Hampshire ; Samuel Hood, commodore and commander of his Majesty’s ships ; Thomas Hutchinson, lieutenant-governor of Massachusetts ; Jonathan Warner and George Jaffrey, of his Majesty’s Council in New Hampshire ; Robert Auchmuty, judge of the court of vice-admiralty for Massachusetts ; John Andrews, judge of the court of vice-admiralty for Rhode Island ; Andrew Oliver, secretary of the province ; Robert Trail, collector of the port of Portsmouth ; John Nutting, collector of Salem ; Joseph Harrison, collector of Boston.

“The trial occupied a week. The fact of the homicide was clearly proved ; but it appeared that neither the lieutenant nor any of his superior officers were authorized to impress, by any warrant or special authority from the Lords of the Admiralty ; and the court was unanimously of opinion, that the prisoners had a good right to defend themselves, and that they ought to be acquitted of murder, with which they were charged ; and that, at common law, the killing would not have amounted to manslaughter.

“The prisoners were accordingly discharged, and a midshipman of the *Rose* was immediately arrested in an action for damages for the wound inflicted in the arm of one of them, and gave bail in the sum of three hundred pounds.”—pp. 297 – 300.

ART. VIII. — 1. *The Jubilee of the Constitution ; a Discourse delivered at the Request of the New York Historical Society in the City of New York, on Tuesday, the 30th of April, 1839 ; being the Fiftieth Anniversary of the Inauguration of George Washington, as President of the United States, on Thursday, the 30th of April, 1789.* By JOHN QUINCY ADAMS. New York : Samuel Colman. 8vo. pp. 136.

2. *An Oration on the Material Growth and Territorial Progress of the United States, delivered at Springfield, Massachusetts, on the Fourth of July, 1839.* By CALEB CUSHING. Springfield : Merriam, Wood, & Co. 8vo. pp. 32.

3. *Representative Democracy in the United States; an Address delivered before the Senate of Union College, on the 26th of July, 1841.* By BENJAMIN FRANKLIN BUTLER. Albany: C. Van Benthuyssen. 8vo. pp. 43.

It is the commonest thing in the world for great schemes to turn out great failures. The Constitution of the United States has been a splendid exception. If we were to break up to-morrow, and go back into the dismal condition from which it drew us, as it were by the hair of the head, still it would have proved a most beneficent institution; and had it accomplished but a tithe of its actual benefit, it would have perhaps fully met the average expectations of its projectors. With an uncertain future before them, — with a fair chance that its early trials would not be of peculiar hardship, — they were as far as possible from being sanguine as to its sufficiency; could they have looked but a little way into coming time, and seen in what a shaking of the political elements it was to have the training of its infancy, they could scarcely have failed to despair. Nobody was exactly suited; some for one reason, and some for its opposite, — these, because they detested a monarchy, those, because they distrusted a republic, — were all but utterly disaffected. Nothing brought about a union, as to the instrument finally matured, except the soberest “certainty of waking *woe*.” With no credit abroad; no authority, that the rest of the world would treat with; public bankruptcy already incurred; private bankruptcy fast becoming universal; commerce ruined; agriculture at a stand; the administration of justice defied; the States already at feud with one another, and their citizens, — unawed by such a poor shadow of authority as confronted their discontent, — mustering for those disorders which want makes unmanageable and goes far to excuse, hardly could the condition of things be made worse by any change. What good and wise men had to do, was to arrange some compromise of their discordant opinions, and give it a fair trial, with the advantage of as much of a spirit of mutual forbearance and accommodation as they were able to diffuse from their own, through the public mind. Their part was, to do for the best, and then hope the best.

That they could not hope confidently, was only their misfortune. That, nevertheless, they deliberated diligently, ac-

commodated each other patiently, and generously addressed themselves, in their respective spheres, to recommend the fruit of their joint counsels to the public acceptance, and make it as far as possible an instrument of the public good, — this was their admirable merit. Providence is apt to smile upon labors of a disinterested wisdom, and with a most bountiful benignity did it smile upon theirs. History will remark the beautiful coincidence of the sudden establishment of social order with sufficient safeguards on this continent, just in season to watch the pompous social fabric of the older world tumbling into a sudden ruin. The little craft was just put into perfect trim, her complete suit of new gear had been strongly set up, her stout crew were posted at their stations, and the world's best pilot had grasped the wheel, just before an unlooked for hurricane swept the surface of the great deep. She was only in the skirts of the storm, but near enough, had there been any thing weak about her, to be sucked in and engulfed, like so many prouder vessels. She staggered and reeled, as it was, but she minded her helm like a beauty; not a rope parted; not a spar was sprung; and presently she was seen under all sail for as prosperous a voyage as ever good fortune and good management conducted.

Mr. Adams, a younger contemporary and coadjutor of the patriots, who set the American government in motion, himself experienced in its highest trusts, and in the anxieties of its most perilous trials, looks back on its operation through half a century, to congratulate his countrymen upon the signal success of the great experiment. The Historical Society of the State of New York, having resolved to celebrate, with suitable ceremonies, the Jubilee of the Constitution, with unquestionable propriety selected the veteran statesman of New Eng'and to address them on that occasion. Mr. Adams profited by the opportunity to lay before the people of the United States some weighty comments upon the Declaration of Independence, by the Congress of 1776, and upon the Federal Constitution of 1787, which embodied and practically applied its principles. He urged, in particular, that "this Union was formed by a spontaneous movement of *the one people* of the thirteen English colonies;" that it was by this *one people*, through their representatives, and for them, as one, that Independence was declared; that the subsequent "Articles of Confederation," in their full recognition of the princi-

ple of state sovereignty, contained a fatal departure from the principle of the Declaration ; that the *League of States*, under those articles, was not entered into by the people, but was an act of usurpation on the part of their delegates in Congress ; that the misfortunes which followed were but the proper consequence of such an unnatural state of things, and of the adoption of such a vicious form of government ; further ;

“ That the tree was made known by its fruits. That after five years wasted in its preparation, the confederacy dragged out a miserable existence of eight years more, and expired like a candle in the socket, having brought the Union itself to the verge of dissolution.

“ That the *Constitution of the United States* was a return to the principles of the *Declaration of Independence*, and the exclusive constituent power of the people. That it was the work of the ONE PEOPLE of the United States ; and that those United States, though doubled in numbers, still constitute, as a nation, but ONE PEOPLE.

“ That this Constitution, making due allowance for the imperfections and errors incident to all human affairs, has, under all the vicissitudes and changes of war and peace, been administered upon those same principles, during a career of fifty years.

“ That its fruits have been, still making allowance for human imperfection, a more perfect union, established justice, domestic tranquillity, provision for the common defence, promotion of the general welfare, and the enjoyment of the blessings of liberty by the constituent *people*, and their posterity to the present day.” — p. 118.

Mr. Adams concludes in the following tone of patriarchal exhortation.

“ And now the future ‘ is all before us, and Providence our guide ’

“ When the children of Israel, after forty years of wanderings in the wilderness, were about to enter upon the promised land, their leader, Moses, who was not permitted to cross the Jordan with them, just before his removal from among them, commanded, that, when the Lord their God should have brought them into the land, they should put the curse upon Mount Ebal, and the blessing upon Mount Gerizim. This injunction was faithfully fulfilled by his successor, Joshua. Immediately after they had taken possession of the land, Joshua built an altar to the Lord, of whole stones, upon Mount Ebal. And there he

wrote upon the stones a copy of the law of Moses, which he had written in the presence of the children of Israel ; and all Israel, and their elders and officers, and their judges, stood on the two sides of the ark of the covenant, borne by the priests and Levites, six tribes over against Mount Gerizim, and six over against Mount Ebal. And he read all the words of the law, the blessings and cursings, according to all that was written in the book of the law.

“ Fellow-citizens, the ark of *your* covenant is the Declaration of Independence. Your Mount Ebal, is the confederacy of separate State sovereignties, and your Mount Gerizim is the Constitution of the United States. In that scene of tremendous and awful solemnity, narrated in the Holy Scriptures, there is not a curse pronounced against the people upon Mount Ebal, not a blessing promised them upon Mount Gerizim, which your posterity may not suffer or enjoy, from your and their adherence to, or departure from, the principles of the Declaration of Independence, practically interwoven in the Constitution of the United States. Lay up these principles, then, in your hearts, and in your souls, — bind them for signs upon your hands, that they may be as frontlets between your eyes, — teach them to your children, speaking of them when sitting in your houses, when walking by the way, when lying down and when rising up, — write them upon the door-posts of your houses, and upon your gates, — cling to them as to the issues of life, — adhere to them as to the cords of your eternal salvation. So may your children’s children at the next return of this day of jubilee, after a full century of experience under your national Constitution, celebrate it again in the full enjoyment of all the blessings recognised by you in the commemoration of this day, and of all the blessings promised to the children of Israel upon Mount Gerizim, as the reward of obedience to the law of God.” — pp. 118 – 120.

Assuming a similar point of view, Mr. Cushing (now Chairman of the Representatives’ Committee of Foreign Relations) addressed the citizens of Springfield, on “the Material Growth and Territorial Progress of the United States.” “Material growth,” though not a certain or unalloyed, is of course a very desirable good, and a legitimate and primary object of government. The questions, how great a good a given “territorial progress” of these United States may be, and under what conditions it will prove any good at all, are among the deepest which an American statesman and patriot has to weigh. The acquisition of Louisiana,

the largest item of "territorial progress" which Mr. Cushing has to exhibit, was obtained by a proceeding, which, in calling it a flagrant violation of the Constitution, we scarcely characterize in stronger language than was used in private by Mr. Jefferson himself, the great champion of the measure. Much immediate good has followed it; we hope that all the good will be permanent; though we cannot but see, that no other act of the government has treated the Constitution so much as if it were but waste paper, or gone so far towards making it so for the future. At all events, the picture which Mr. Cushing presents is a striking one to the imagination.

"At the conclusion of the War of Independence, the nominal limits of the United States were the British Provinces, as now, on the north, the Mississippi on the west, and Louisiana and Florida on the southwest and south. But the practical limits were much less. Stretched along the shores of the Atlantic Ocean were the thirteen original United States, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, which, by the Treaty of Peace, the King of Great Britain acknowledges to be free, sovereign, and independent states; that he treats with them as such, and relinquishes all claims to the government, property, and territorial rights of the same, and every part thereof. Massachusetts, her actual limits reaching only a hundred miles inland from the sea, and Virginia, scarcely settled further, were then foremost among the States in wealth and population. New York, her rich interior yet unoccupied, was very far short of her present empire dimensions. Pennsylvania was but just proceeding to occupy the slope of the Alleghanies. The hardy pioneers of Kentucky and Tennessee, offshoots of Virginia and North Carolina, had scarcely begun to cross the mountains, and to acquire, in the long struggle with the savages around them, the qualities of courage, hardihood, gallantry, and spirit, which they have transmitted to their sons. Vermont, though not yet recognised as a separate State, had, by the patriotism of her children, secured the right to be so considered, and as such admitted in due time into the Union. Maine, known only as a portion of Massachusetts, was, in the chief part of it, an untrodden wilderness. Thus, over a space of fifteen hundred miles along the Atlantic Ocean, were the then United States scattered, covering, in comparison with the vast interior of the Continent, only as it were a riband of sea beach."—pp. 8, 9.

“The population of the United States, which in 1790 was but four millions, is now sixteen or seventeen millions. The revolutionary debt, of near eighty millions of dollars, has been wholly discharged without any sensible inconvenience to the people, and that in the face of a maritime war with France, a general war with England, conflicts with the Barbary States, many Indian wars, and the perpetual progress of most expensive establishments of education, commerce, and internal communication ; while in the same period the war debts of other nations have been devouring their private substance and crippling their public energies. The annual current revenues of the United States have in the same period increased from five millions to twenty-five ; our commercial tonnage from half a million to two millions ; our annual foreign exports from twenty millions of dollars, to one hundred and forty millions ; and our trading ships, then chiefly confined in their range to a portion of Europe and the West Indies, now dispute with those of Great Britain the palm of maritime ascendancy in every quarter of the globe. Nor has our national growth in territory been less remarkable ; for, straitened no longer in the narrow strip between the Alleghanies and the Atlantic Ocean, our population has swarmed into the valley of the Mississippi, occupied the region of the Lakes, possessed itself of Louisiana and Florida, and is now looking beyond the Rocky Mountains to the shores of the great Pacific Sea ; and everywhere it has carried with it the laws, the institutions, the religion, the combined love of order and love of freedom, the industrial energy and activity, and the monuments of art, knowledge, and commerce, and the general civilization, which our European forefathers brought hither with them, and which, wherever their children are found, testify to the blood and the principles of the original colonists of the United States.”— pp. 11, 12.

Mr. Butler, lately Attorney-general, in his recent Address at Schenectady on “Representative Democracy in the United States,” glances at yet another subject, suggested by the fifty years’ operation of the Federal Government, and one which it would afford us the highest satisfaction to see treated at large by so competent a pen. The judicious lover of his country not only inquires what good fruit her institutions have hitherto produced, but how they are actually operating so as to hold out happy pledges for the future. He looks not only at the wealth of the product, but at the condition of the machinery. Suppose it has wrought wonders of social prosperity ; still, if it has itself meanwhile been

wearing out, or if the *primum mobile* has been wasting, — if external influences that at first affected it are exhausted, or are acting with less and still lessening force, — if experience has revealed any imperfect adjustments, from which, through the incessant friction, a derangement of the whole motion may ultimately ensue, — no facts can be matter for more solicitous concern than these. Was there, at the origin of these institutions, a generally diffused public virtue, which caused them at first to act beneficially, but which they in their turn have corrupted, or have failed to preserve? Were the principles of the Constitution at first applied by the citizen, in the discharge of his public functions, with an integrity, which the very successes it insured have at length depraved? Have majorities and demagogues been learning to elude the obstacles, piled up by the wisdom of the fathers to turn them back in their mad way towards the overthrow of justice and order? Have the conditions of public life failed to obtain for the public the most competent servants? Has office, from any cause, fallen into meaner hands, and has the standard of character and of qualification among public men been sensibly lowered? If these, or like tendencies have been developed in any dangerous degree, the retrospect of so long a time will afford some advantage for detecting them.

We do not propose at present to discuss a subject, which, treated at large, and with a due comprehension of its relations, would be treated to such excellent purpose at this period of our national history, when we are old enough to be taught by experience, and not too old to learn. One manifest sign of the times is indicated in the title of Mr. Butler's Address. No man knows better than he, what would have been the horror of the framers of the Constitution, could they have been told, that in fifty years' time, the government they were setting up with such carefully framed safeguards against what they called *democracy* would be itself called a democracy by one of its own highest officers. How would the whole hierarchy of the liberal faith have cried out with one voice against such a misnomer of their doctrine.* If Mr. Butler chooses

* Mr. Randolph said, ("Madison Papers," p. 758,) "In tracing these evils to their origin, every man had found it in the turbulence and follies of democracy; that some check, therefore, was to be sought for against this tendency of our governments;" Mr. Madison (*Ibid.*, p. 806), "Where a majority are united by a common sentiment, and have an opportunity, the

to defend his use of the word by a philological argument, we have no more to say. No doubt the government of the United States is, strictly speaking, a government of the people. The people are the one source of all power ; no officer, in any department of administration, holds his commission except, at some remove, from them ; nobody would be so witless as to pretend that there is any monarchical or aristocratic element in our constitutions. But use settles the meaning of words ; and the word *democracy* has, we conceive, been so long employed to denote a government, — if government it can be called, — in which the mass of a people works without check its momentary will, that there is a violence in applying it to a form of authority devised to avert its peculiar tendencies of evil ; and, if it is bad taste in the successive parties to underbid each other by the use of such phraseology, it is much worse in Mr. Butler, possessing as he does, a degree of sense and knowledge, to which party leaders in general make no pretension.

But this only by the way. Mr. Butler, like the other writers we have quoted, finds abundant cause of satisfaction in the results of the experiment of the Constitution. Having referred to the anxieties of the time preceding its adoption, he thus goes on ;

“ These apprehensions are at length dispelled ; a Constitution, remedying the defects of the confederation and fully adequate to all the purposes of a paternal and efficient national government, is agreed on ; submitted to the people of the several States ; finally approved by them ; and put in complete and useful operation ; and all without bloodshed, violence, or confusion.

“ Representative Democracy, in the United States, has now received its last, its crowning developement. In the internal policy of the several States, and over a confederacy such as the world has never seen, it dispenses the blessings of peace, liberty, and justice. To foreign nations it displays itself in forms which command universal respect. To philosophers and statesmen, it presents new subjects of study and reflection ;

rights of the minor party become insecure ; in a republican government, the majority, if united, have always an opportunity ; the only remedy is,” &c. Mr. Gerry (*Ibid.*, p. 1603) spoke of democracy as “ the worst, he thought, of all political evils.” In short, as Hamilton observed, “ the members most tenacious of republicanism were as loud as any in declaiming against the vices of democracy.”

and to down-trodden man, in every quarter of the globe, it hangs out a banner of hope, a signal of deliverance.

“The great experiment has been gloriously successful. The United States, in every stage of their career ; in peace and in war ; in the arts of social life ; in political science ; in knowledge, and morals, and religion ; have vindicated the wisdom, the safety, the beneficence of Representative Government, founded on the broadest basis of Democratic Liberty.”
— *Butler's Address*, pp. 15, 16.

Proceeding to “inquire into the causes which have given to democratic institutions in the United States this unexampled success,” he finds the most prominent to be three in number, the first of which is, “the adaptation of the *people* to such institutions” ; and the particulars of this adaptation he discerns in two things, namely, the character of the people in respect to intelligence and virtue, and their experience, since the foundation of the colonies, in the exercise of self-government.

To the adaptation of the people to their institutions, in these all-important particulars, no doubt the success of the experiment has been mainly due, though, as to the first point, the inquiry, how far the experience of the past would authorize an augury for the future, would raise another question of fact altogether too comprehensive for us now to entertain. On the other hand, there has certainly been proved to be some *want of adaptation* on the part of the tastes and preferences of the people, to the theory of their government, such as has actually availed, in some particulars, to prevent that theory from being wrought out in practice.

The most considerable example of this is found in the arrangements for the selection of the head of the government. It was the sense of the statesmen of the day, both in the convention which framed the Constitution and in the State conventions which adopted it, that the right choice was of that extreme importance, — while, on the other hand, it would so enlist popular passion, and be attended with such dangers of turbulence, and even of revolution, — that it could not be trusted to popular assemblies, but must be devolved on some select body, whose patriotism and judgment the people might trust, from time to time, to make the right selection. When the suggestion was made of the suitableness of a choice directly by the people, it was accompanied with expressions,

not only of the extreme distrust which it was destined to meet, but even of the great uncertainty of the mover's own mind respecting it. "Mr. Wilson said, he was almost unwilling to declare the mode which he wished to take place, being apprehensive that it might appear chimerical ; he would say, however, at least, that in theory he was for an election by the people." * "Mr. Mason favored the idea, but thought it impracticable ; he wished, however, that Mr. Wilson might have time to digest it into his own form" ; † and, this done, he afterwards characterized it as a proposal "that an act, which ought to be performed by those who know most of eminent characters and qualifications, should be performed by those who know least." ‡ Mr. Gerry said, "the popular mode of electing the chief magistrate would certainly be the worst of all ; if he should be so elected, and should do his duty, he would be turned out for it." § At any rate, it found the least favor of all, and almost every other possible method was thought of instead. An election by the federal legislature, or by the higher branch of it, or by individuals taken from it by lot, or by the State legislatures, or by the State executives, — all these were expedients successively proposed and discussed, to avoid the dreaded dangers of a popular choice. The plan finally adopted, of choosing by colleges of electors, to be appointed specially for that purpose in the several States, was regarded with a favor scarcely bestowed on any other provision of the Constitution. Says the "Federalist" on this point ;

"The mode of appointment of the chief magistrate of the United States, is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents. The most plausible of these, who has appeared in print, has even deigned to admit, that the election of the president is pretty well guarded. I venture somewhat further, and hesitate not to affirm, that, if the manner of it be not perfect, it is at least excellent. It unites in an eminent degree all the advantages, the union of which was to be wished for.

"It was desirable, that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any preëstablished body, but to

* See the *Madison Papers*, p. 766. † *Ibid.*, p. 763. ‡ *Ibid.*, p. 1208.
§ *Ibid.*, p. 1149.

men chosen by the people for the special purpose, and at the particular conjuncture.

"It was equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station; and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements that were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to so complicated an investigation.

"It was also peculiarly desirable to afford as little opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate, who was to have so important an agency in the administration of the government. But the precautions, which have been so happily concerted in the system under consideration, promise an effectual security against this mischief. The choice of several, to form an intermediate body of electors, will be much less apt to convulse the community with any extraordinary or violent movements, than the choice of one, who was himself to be the final object of the public wishes. And as the electors, chosen in each State, are to assemble and vote in the State in which they are chosen, this detached and divided situation will expose them much less to heats and ferments, that might be communicated from them to the people, than if they were all to be convened at one time, in one place."—*Federalist*, pp. 424, 425.

"This process of election affords a moral certainty, that the office of president will seldom fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors of a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it, as would be necessary to make him a successful candidate for the distinguished office of president of the United States."—*Ibid.*, p. 427.

The people were to choose men of such integrity and wisdom, as to be fit to be trusted with the august office of choosing a president; and then the president would be judiciously selected, and without the inconvenience of popular agitation, and the danger of popular tumults. Such was the theory. What has been the practice? Let the mass-meetings, the processions, the song-singsings of the recent elec-

tions, let the hickory-poles and log-cabins, let the pilgrimages of popular orators, some of them too men well versed in the theory of the Constitution, declare. The intervention of the electoral colleges has notoriously become a mere pageant. The people, when the election comes round, vote in their primary assemblies for a president, and not for a set of men capable of choosing a president, though this, to be sure, is the sham. The candidates for the office of elector are pledged beforehand. Maelzel's automaton, with a ballot in his wooden hand, could execute their trust as well. Inferior men have been repeatedly charged with that once venerable trust, avowedly on the ground of its being only a ministerial office. So it has been, is, and will be. If forms of the Constitution were transgressed by the present practice, there would be either a correction of the latter, or, — what is much more likely, as things now stand, — a remodelling of the former. But, as only its spirit is violated, there is no chance of a remedy on the one hand, and no occasion for reform on the other. All that remains to be said is, that either the framers of the Constitution were mistaken, or we of this age are wiser and better than the contemporaries for whom they devised a government, or else, once more, we are so far on our road to mischief.

The same remark, of a proved want of adaptation, on the part of the tastes and preferences of the people, to the theory of their government, holds good, in a considerable portion of the country, as to another point, — the control of the constituent body over the discretion of the public servants in office. With a distinctness, which occasions us unspeakable surprise in one so well acquainted with the Constitution and its history, Mr. Butler, among other "broad principles laid by the builders of our institutions, as the foundation-stones of all their political architecture," specifies this, — "that the people have the right to inspect the conduct of their representatives, *to instruct* them, from time to time, and to hold them accountable for their acts." Of course, the Constitution contemplated that the people should "inspect the conduct of their representatives," and "hold them accountable for their acts," dismissing them, if unworthy, from office, when its constitutional term should expire. The capacity of the people to choose a suitable representative, and their power to displace him again, should he prove

treacherous or incompetent, at a fixed period before he would have time enough to do much harm, — these were what the framers of the Constitution relied upon to secure to the people a legislature worthy of its trust. But where does Mr. Butler read, that they proposed further to limit the representative's discretion, or rather to divest him of discretion, and of all elevated responsibility, by making his course in office subject to be determined by "instructions from time to time"? On the contrary, one of the problems which engaged their most anxious deliberation was, how to give to the representative, especially to the representative in the branch most relied upon to contribute a character of stability to the government, a sufficient independence, while in office, of temporary influences. Even as to the most popular branch, some were for extending the term of service of its members to three years;* some would have had them elected by the State legislatures;† and others would have disqualified them for reelection for a specified period.‡ In respect to the office of senator, some members of the Convention, and among them individuals too of the liberal school, would have had its tenure for life, or during good behaviour;§ and others, for a longer term than that finally determined on.|| Some would have had them derive their appointment from the president,¶ some from the representatives,** some from electors chosen by the people for that purpose.†† But, whatever the particular arrangement should be, there was a general agreement upon the point, that their tenure of office should be such as would be "sufficient

* *Madison Papers*, pp. 858, 890, &c. † *Ibid.*, pp. 753, 756, 800, &c.

‡ *Ibid.*, p. 731.

§ *Ibid.*, pp. 887, 890, 960, 1019, &c.

|| "Mr. Madison considered seven years as a term by no means too long. What he wished was, to give to the government that stability which was everywhere called for, and which the enemies of the republican form alleged to be inconsistent with its nature. He was not afraid of giving too much stability by the term of seven years. His fear was, that the popular branch would still be too great an overmatch for it. . . . He conceded it to be of great importance, that a stable and firm government, organized in the republican form, should be held out to the people. If this be not done, and the people be left to judge of this species of government by the operations of the defective systems under which they now live, it is much to be feared, the time is not distant, when, in universal disgust, they will renounce the blessing which they have purchased at so dear a rate, and be ready for any change that may be proposed to them." *Ibid.*, pp. 852, 853.

¶ *Ibid.*, 814, 1020, &c.

** *Ibid.*, pp. 732, 737, 744, &c.

†† *Ibid.*, p. 890.

to ensure their independency ;” * that their number should be so constituted as to be a check against “ the turbulence and follies of democracy,” † and against “ the precipitation, changeableness, and excesses of the first branch.” ‡ And on this basis, the matter was firmly and frankly debated before the people, on the question of the adoption of the scheme by the State Conventions. Mr. Madison, in his argument, in the 62d and 63d numbers of “ *The Federalist*,” that the Senate “ ought to possess great firmness, and consequently ought to hold its authority by a tenure of considerable duration,” has shown how a rising politician of the year 1788, could venture to reason with the people about the way of protecting their own interests.

“ Such an institution may be sometimes necessary, as a defence to the people against their own temporary errors and delusions. As the cool and deliberate sense of the community ought, in all governments, and actually will, in all free governments, ultimately prevail over the views of its rulers ; so there are particular moments in public affairs, when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career, and to suspend the blow meditated by the people against themselves, until reason, justice, and truth can regain their authority over the public mind. What bitter anguish would not the people of Athens have often escaped, if their government had contained so provident a safeguard against the tyranny of their own passions ? Popular liberty might then have escaped the indelible reproach of decreeing to the same citizens the hemlock on one day, and statues on the next.” — *Federalist*, pp. 394, 395.

“ Doth a fountain send forth at the same place sweet water and bitter ? ” Yet so it was, that, in a strikingly short time after the Virginia school of politicians represented by Mr. Madison had been in the ascendant, there succeeded another, much wiser or more foolish, as the event may prove ; and now, in no small number of the States, a vital, we were about to say, — and so it was considered by the framers, — at

* *Madison Papers*, pp. 732, 758, &c.

† *Ibid.*, pp. 758, 887, &c.

‡ *Ibid.*, p. 1018.

all events, a prominent provision of the Constitution is constantly nullified in spirit without any departure from the forms. By a scarcely pleasant fiction, a legislature chooses a Federal Senator to serve for six years, when all the world knows that he is chosen only to serve till such time as the same legislature or another shall please to *instruct* him out. In the theory of the Constitution, a Federal Representative holds his place for two years, a Senator for six. In practice,—since a Representative will hardly give unpardonable offence before one session has expired, and then only another session remains before the regular time comes to supersede him, so that to invite him to resign would be to incur the trouble of an extraordinary popular election for a small benefit,—in the practice of some States, the Representative is already the more permanent officer of the two. He holds his place for two years; the Senator, during the State legislature's pleasure. It is as if, after all the solemn parade of discussion of the subject, the Constitution had said, the State legislatures shall choose, not every six years, but as often as they shall be pleased to choose. And, unless public opinion is brought into greater sympathy with the Constitution, the same abuse will continue in the same quarters, as long as candidates for the Senate can be found, whose opinions or whose consciences will allow them to take the official oath of fidelity to the Constitution, while they hold themselves ready to abandon on demand the high conservative function, which the Constitution has committed to that department of authority.

But we must stop where we are. We were attracted by the title of Mr. Butler's pamphlet, and by the reputation of its author, to express a few hasty thoughts upon matters which he treats; but we have already exhausted our little space, and other topics hinted at by him so open before us, as to forbid the attempt to pursue them at present. Mr. Butler concludes his address with a judicious course of remarks upon the necessity of "a wise internal regimen, to render representative bodies efficient," which well deserves the careful consideration of our sages now in Congress assembled.
